

110TH CONGRESS  
1ST SESSION

# S. 2289

To amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2007

Mr. ALEXANDER (for himself, Mr. PRYOR, Mr. KYL, Mr. NELSON of Nebraska, Mr. CORNYN, Mr. CORKER, Mr. COCHRAN, Mrs. HUTCHISON, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend chapter 111 of title 28, United States Code, to limit the duration of Federal consent decrees to which State and local governments are a party, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Consent De-  
5       cree Fairness Act”.

### 6   **SEC. 2. FINDINGS.**

7       Congress finds that:

1           (1) Consent decrees are for remedying viola-  
2           tions of requirements of Federal law, and they  
3           should not be used to advance any policy extraneous  
4           to that purpose.

5           (2) Consent decrees are also for protecting the  
6           party or class facing injury and should not be ex-  
7           panded to apply to parties not involved in the litiga-  
8           tion.

9           (3) In structuring consent decrees, courts  
10          should take into account the interests of State and  
11          local governments in managing their own affairs.

12          (4) Consent decrees should be structured and  
13          administered to give due deference to the policy  
14          judgments of State and local officials, and their suc-  
15          cessors, as to how to obey the law.

16          (5) Whenever possible, courts should not impose  
17          consent decrees that require technically complex and  
18          evolving policy choices, especially in the absence of  
19          judicially discoverable and manageable standards.

20          (6) Consent decrees should not be unlimited,  
21          but should contain an explicit and realistic strategy  
22          for ending court supervision.

1 **SEC. 3. LIMITATION ON CONSENT DECREES.**

2 (a) IN GENERAL.—Chapter 111 of title 28, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 1660. Consent decrees**

6 “(a) DEFINITIONS.—In this section, the term ‘con-  
7 sent decree’—

8 “(1) means any order imposing injunctive or  
9 other prospective relief against a State or local gov-  
10 ernment, or a State or local official sued, entered by  
11 a court of the United States that is based in whole  
12 or part upon the consent or acquiescence of the par-  
13 ties; and

14 “(2) does not include—

15 “(A) private settlements agreements;

16 “(B) any order arising from an action filed  
17 against a government official that is unrelated  
18 to his or her official duties;

19 “(C) any order entered by a court of the  
20 United States to implement a plan to end seg-  
21regation of students or faculty on the basis of  
22 race, color, or national origin in elementary  
23 schools, secondary schools, or institutions of  
24 higher education; and

25 “(D) any order entered in any action—

1 “(i) filed by the United States or any  
 2 agency of the United States, except for re-  
 3 porting requirements provided under sec-  
 4 tion 4 of the Federal Consent Decree Fair-  
 5 ness Act; or

6 “(ii) in which 1 State is an adverse  
 7 party to another State.

8 “(b) LIMITATION ON DURATION.—

9 “(1) IN GENERAL.—A State or local govern-  
 10 ment, or a State or local official who was a party  
 11 to the consent decree (or the successor to that indi-  
 12 vidual) may file a motion under this section with the  
 13 court that entered a consent decree to modify or ter-  
 14 minate the consent decree upon the earlier of—

15 “(A) 4 years after a consent decree is  
 16 originally entered by a court of the United  
 17 States, regardless if the consent decree has  
 18 been modified or reentered during that period;  
 19 or

20 “(B) in the case of a civil action in  
 21 which—

22 “(i) a State or an elected State offi-  
 23 cial is a party, the expiration of the term  
 24 of office of the highest elected State offi-  
 25 cial who was a party to the consent decree;

1                   “(ii) a local government or elected  
 2                   local government official is a party, the ex-  
 3                   piration of the term of office of the highest  
 4                   elected local government official who was a  
 5                   party to the consent decree; or

6                   “(iii) the consent to the decree was  
 7                   authorized by an appointed State or local  
 8                   official, upon the expiration of the term of  
 9                   office of the elected official who appointed  
 10                  that State or local official, or the highest  
 11                  elected official in that State or local gov-  
 12                  ernment; or

13                  “(C) the date otherwise provided by law.

14                  “(2) BURDEN OF PROOF.—

15                  “(A) IN GENERAL.—With respect to any  
 16                  motion filed under paragraph (1), the burden of  
 17                  proof shall be on the party who originally filed  
 18                  the civil action to demonstrate that the denial  
 19                  of the motion to modify or terminate a consent  
 20                  decree or any part of a consent decree is nec-  
 21                  essary to prevent the violation of a requirement  
 22                  of Federal law that—

23                         “(i) was actionable by such party; and

24                         “(ii) was addressed in the original  
 25                         consent decree.

1           “(B) FAILURE TO MEET BURDEN OF  
2 PROOF.—If a party fails to meet the burden of  
3 proof described in subparagraph (A), the court  
4 shall terminate the consent decree.

5           “(C) SATISFACTION OF BURDEN OF  
6 PROOF.—If a party meets the burden of proof  
7 described in subparagraph (A), the court shall  
8 ensure that any remaining provisions of the  
9 consent decree represent the least restrictive  
10 means by which to prevent such a violation.

11           “(3) RULING ON MOTION.—

12           “(A) IN GENERAL.—The court shall rule  
13 expeditiously on a motion filed under this sub-  
14 section.

15           “(B) SCHEDULING ORDER.—Not later  
16 than 30 days after the filing of a motion under  
17 this subsection, the court shall enter a sched-  
18 uling order that—

19                   “(i) limits the time of the parties to—

20                           “(I) file motions; and

21                           “(II) complete any required dis-  
22 covery; and

23                   “(ii) sets the date or dates of any  
24 hearings determined necessary.

1                   “(C) STAY OF INJUNCTIVE OR PROSPEC-  
 2                   TIVE RELIEF.—In addition to any other orders  
 3                   authorized by law, the court may stay the in-  
 4                   junctive or prospective relief set forth in the  
 5                   consent decree in an action under this sub-  
 6                   section if a party opposing the motion to modify  
 7                   or terminate the consent decree seeks any con-  
 8                   tinuance or delay that prevents the court from  
 9                   entering a final ruling on the motion within 180  
 10                  days of the filing of the motion.

11               “(c) OTHER FEDERAL COURT REMEDIES.—The pro-  
 12               visions of this section shall not be interpreted to prohibit  
 13               a Federal court from entering a new order for injunctive  
 14               or prospective relief to the extent that it is otherwise au-  
 15               thorized by Federal law.

16               “(d) AVAILABLE STATE COURT REMEDIES.—The  
 17               provisions of this section shall not prohibit the parties  
 18               from seeking appropriate relief under State law.”.

19               (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 20               The table of sections for chapter 111 of title 28, United  
 21               States Code, is amended by adding at the end the fol-  
 22               lowing:

“1660. Consent decrees.”.

23 **SEC. 4. DEPARTMENT OF JUSTICE REPORT.**

24               (a) IN GENERAL.—Not later than October 1 of each  
 25               year, the Attorney General shall submit a report to Con-

1 gress on all consent decrees in which the United States  
2 is a party where the consent decrees were entered 4 or  
3 more years prior to the date of the report.

4 (b) CONTENT OF REPORTS.—The report required  
5 under subsection (a) shall include—

6 (1) copies of any consent decrees described in  
7 subsection (a); and

8 (2) a written statement by the Attorney Gen-  
9 eral or other agency head explaining—

10 (A) why each consent decree listed in the  
11 report requires continued court supervision; and

12 (B) any efforts the United States had  
13 made to limit the scope or duration of the con-  
14 sent decree.

15 (c) PREPARATION OF REPORT.—

16 (1) IN GENERAL.—Federal agencies other than  
17 the Department of Justice shall provide the informa-  
18 tion required in this section to the Attorney General  
19 not later than September 1 of each year.

20 (2) INPUT.—In preparing the report required  
21 under subsection (a), the Attorney General or other  
22 agency head shall solicit, and include in the report,  
23 statements relating to each consent decree from  
24 State and local officials who—



1 (A) support continued court supervision;  
2 and

3 (B) oppose continued court supervision.

4 (d) ELECTRONIC SUBMISSION.—Copies of consent  
5 decrees required by subsection (b)(1)(B) may be sub-  
6 mitted in electronic format.

7 **SEC. 5. GENERAL PRINCIPLES.**

8 (a) NO EFFECT ON OTHER LAWS RELATING TO  
9 MODIFYING OR VACATING CONSENT DECREES.—Nothing  
10 in the amendments made by section 3 shall be construed  
11 to preempt or modify any other provision of law providing  
12 for the modification or vacating of a consent decree.

13 (b) FURTHER PROCEEDINGS NOT REQUIRED.—  
14 Nothing in the amendments made by section 3 shall be  
15 construed to affect or require further judicial proceedings  
16 relating to prior adjudications of liability or class certifi-  
17 cations.

18 **SEC. 6. EFFECTIVE DATE.**

19 The amendments made by this Act shall take effect  
20 on the date of enactment of this Act and apply to all con-  
21 sent decrees regardless of—

22 (1) the date on which the order of a consent de-  
23 cree is entered; or

1           (2) whether any relief has been obtained under  
2       a consent decree before the date of enactment of this  
3       Act.

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